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CHITHARTHAN KUMAR JAYAKUMAR v. PP

HIGH COURT MALAYA, SHAH ALAM
WONG TECK MENG JC
[CRIMINAL APPEAL NO: 42S-68-09-2015]
12 MAY 2016

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CRIMINAL LAW: *Possession of offensive weapon – Finding of fact – Ingredients of – Whether elements of possession proved – Whether there was evidence to connect accused to weapon – Failure to call material witnesses – Whether accused had knowledge of weapon – Whether there was possibility of anyone else having ownership and possession of weapon – Whether possession proved against accused – Whether accused acquitted and discharged – Corrosive and Explosive Substances and Offensive Weapons Act 1958, s. 6(1)*

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CRIMINAL PROCEDURE: *Sentence – Appeal against conviction and sentence – Possession of offensive weapon – Finding of fact – Ingredients of – Whether elements of possession proved – Whether there was evidence to connect accused to weapon – Failure to call material witnesses – Whether accused had knowledge of weapon – Whether there was possibility of anyone else having ownership and possession of weapon – Whether possession proved against accused – Whether accused acquitted and discharged – Corrosive and Explosive Substances and Offensive Weapons Act 1958, s. 6(1)*

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The appellant was found sitting in a grey Perodua Myvi ('the vehicle') alone on the side of the road during 'Operasi Ops Lejang' ('the operation') carried out by SP1 and his fellow police officers. A search was conducted on the vehicle itself and under the driver's seat, one L/Kprl Erman found a parang with a wooden holder and a black cover together with a box containing keys and iron carvers. After the appellant was brought to the police station, it was found that the car belonged to the wife of the appellant ('the appellant's wife'). The appellant was thus found guilty and was convicted under s. 6(1) of the Corrosive and Explosive Substances and Offensive Weapons Act 1958 ('the said Act') and was sentenced to five years' imprisonment. Hence, the appellant appealed against the decision made by the Sessions Court Judge ('SCJ'). The appellant raised the issue as to whether the ingredients of possession were proven by the prosecution.

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Held (allowing appeal; setting aside conviction and sentence):

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(1) In proving possession, two elements of possession must be proven *ie* custody and control over the parang and the knowledge of the existence of the parang underneath the driver's seat. Herein, the prosecution must prove that the appellant had the power of disposal over the parang. There must be evidence which suggests that the appellant had authority over the parang and not anybody else. The appellant's wife as the owner of the vehicle was a material witness so as to exclude the possibilities of any other person being the rightful owner to the weapon. The prosecution should have called the appellant's wife to

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testify in court in order to exclude the possibility of her or anybody else having ownership or possession of the weapon found in the vehicle so as to prove that the appellant have had possession to the exclusion of others over the parang in the vehicle. (paras 10, 22 & 23)

(2) There was no DNA analysis and fingerprint evidence produced to establish the prosecution's case that the appellant indeed had power of disposal over the parang. There was no fingerprint dusting done on the parang or DNA swaps taken from the parang to show that the appellant was in contact of the parang. If there were the appellant's DNA or fingerprints on the parang, it would indicate that the appellant was in contact with the parang and thus had sufficient knowledge of its existence underneath the driver's seat in the vehicle and at the same time have had the power of disposal over the parang because he had the power to deal with it at every material time. Hence, there was no additional evidence to connect the accused to the parang. (para 24)

(3) Another material witness, L/Kprl Erman was not called as witness for the prosecution. He was the material witness as he was the one who did the thorough search in the vehicle and he was the one who recovered the parang from underneath the driver's seat. As such, he was the best person to provide the evidence on the exact spot on where the parang was found and whether it was visible to others. The evidence given by PW1 was best only at proving that it was L/Kprl Erman who retrieved the parang from the vehicle and not to prove that the appellant had power of disposal over the parang and he was conscious of the possession of it. (para 25)

(4) The proof of knowledge is commonly inferred from the facts and circumstances of the case. When the appellant was approached by the police officers, he was calm and gave his cooperation to the police officers and there was no indication that he intended to run away. The appellant's conduct was consistent to innocence. If the appellant knew that the parang was kept underneath the driver's car seat, he would in normal circumstances put up a struggle and attempted to escape. It was safe therefore to conclude that he did not know about the parang and its whereabouts. As such, the prosecution was unable to prove the mental element for possession which was absent in this case. (para 26)

(5) Since the parang was hidden under the driver's seat of the vehicle, it was not visible to others and the mere fact that the accused was all alone in the vehicle at the material time, did not prove that the appellant had possession of the parang. As the prosecution had failed to exclude the possibility that the appellant's wife or anybody else had the ownership or possession of the weapon found in the vehicle and there was no DNA analysis or even fingerprints evidence to show that the appellant was in contact with the parang, the prosecution had not proven possession against the appellant. (para 27)

A **(6)** The SCJ was wrong in finding that the prosecution had established possession and that there was a *prima facie* case. The SCJ should not have called for defence of the accused as a *prima facie* case at the end of the prosecution's case had not been made out. This court had to interfere with the decision of the SCJ and reverse her decision. Accordingly, the
B appellant was acquitted and discharged. (paras 31 & 33)

Case(s) referred to:
Chan Pean Leon v. PP [1956] 1 LNS 17 HC ***(refd)***
Dato' Yap Peng @ Yap Piang Tau v. PP [1993] 2 CLJ 181 HC ***(refd)***
Husin Sitorus v. PP [2012] 7 CLJ 205 CA ***(refd)***
C *Law Sie Hoe v. PP [2014] 1 LNS 269 CA* ***(refd)***
Low Thiam Teck v. PP [2014] 1 LNS 1104 CA ***(refd)***
PP v. Kang Ho Soh [1991] 3 CLJ 2914; [1991] 3 CLJ (Rep) 557 HC ***(refd)***
Samundee Devan Kerishnan Muthu v. PP [2009] 1 CLJ 498 CA ***(refd)***
Siew Yoke Keong v. PP [2013] 4 CLJ 149 FC ***(refd)***
Syed Ali Syed Abdul Hamid & Anor v. PP [1982] CLJ 188A; [1982] CLJ (Rep) 340 FC
D ***(refd)***
Toh Ah Loh & Mak Thim v. Rex [1948] 1 LNS 72 HC ***(refd)***
Zulfikar Mustaffah v. PP [2001] 1 SLR 633 ***(dist)***

Legislation referred to:
Corrosive and Explosive Substances and Offensive Weapons Act 1958, s. 6(1)

E *For the appellant - Rajpal Singh & Seelan; M/s Rajpal, Firah & Vishnu*
For the respondent - Aidatul Azura Zainal Abidin; DPP

Reported by Suhainah Wahiduddin

F **JUDGMENT**

Wong Teck Meng JC:

Introduction

[1] The appellant was charged for having in possession of a "parang
G berhulu kayu serta sarung berwarna hitam" (parang) found under the driver's seat inside a Myvi WWB 8397 which was his wife's car. The charge reads as follow:

> Bahawa kamu pada 3/12/2014 jam lebih kurang 4.00 pagi, dalam m/kar jenis Myvi, warna kelabu WWB 8397, di Jalan Persiaran Puteri 12, Bandar
H Puteri, Puchong, dalam Daerah Petaling, Dalam Negeri Selangor Darul Ehsan, telah didapati dalam memiliki [1] bilah Parang Panjang Berhulu Kayu Bersarung Hitam tanpa kebenaran yang sah di sisi undang-undang. Oleh yang demikian itu, kamu telah melakukan satu kesalahan yang boleh dihukum di bawah seksyen 6(1) Akta Bahan Kakisan dan Letupan dan Senjata Berbahaya 1958.

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[2] The appellant was found guilty and was convicted under s. 6(1) of the Corrosive and Explosive Substances and Offensive Weapons Act 1958 (the said Act) and was sentenced to five years' imprisonment. Hence, the appellant appealed against the decision made by the Session Court Judge (SCJ), Petaling Jaya.

Facts Of The Case

[3] On 3 December 2014 at about 4am the appellant was found sitting in a grey Perodua Myvi WWB 8397 (the vehicle) alone on the side of the road at Jalan Persiaran Puteri 12, Bandar Puteri Puchong during a "Operasi Ops Lejang" (the operation) carried out by ASP Chai Chee Boon (SP1) and his fellow police officers. SP1 instructed his subordinate, L/Kprl Erman, to conduct a body search on the appellant and a plastic packet containing drugs suspected to be cocaine was found from the pocket of the appellant.

[4] A subsequent search was conducted on the vehicle itself and under the driver's seat by L/Kprl Erman (who was not called as a witness for the trial), a parang with a wooden holder and a black cover together with a box containing nine pair of keys and 16 iron carvers were recovered from the search. After the appellant was brought to the police station, it was found out that the car belonged to one Vethavally a/p Karunakaran who is the wife of the appellant (the appellant's wife).

[5] The appellant was charged under s. 6(1) of the said Act for having in possession of a parang at a public road without any lawful authority. Section 6(1) of the said Act is reproduced as below:

> Any person who in a public road or place has in his possession or under his control any offensive weapon otherwise than with lawful authority or for a lawful purpose shall be guilty of an offence and on conviction be liable to imprisonment for a term not less than five years and not more than ten years.

[6] The SCJ in her findings decided that the prosecution has established a *prima facie* case against the accused person on the said charge by stating as follows:

> Fakta yang tidak dapat disangkal dalam kes ini adalah bahawa P2 dijumpai di dalam kereta seperti di dalam gambar P5(D) di tempat bertanda "X" dipandu oleh OKT, bahawa OKT ketika itu berseorangan di dalam kereta dan kereta berada di dalam milikan OKT pada masa dan tarikh yang material. Jadi, berdasarkan hal fakta mengikut keadaan ini mahkamah merumuskan bahawa pada masa dan tarikh yang material P2 adalah dalam jagaan dan kawalan OKT. Mahkamah mengguna pakai kes *PP v. Kang Ho Soh* dimana Shankar J, menyatakan:
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> > kehadiran ketiga-tiga bungkusan di dalam kereta tanpa satu penjelasan yang meyakinkan diberi oleh responden boleh membangkitkan inferens kukuh bahawa beliau mempunyai pengetahuan bahawa bungkusan-bungkusan mengandungi dadah atau sesuatu yang serupa itu.

A Juga berdasarkan autoriti yang diputuskan oleh Mahkamah Rayuan Singapura di dalam kes *Zulkifar Bin Mustaffa v. PP* [2001] 1 SLR 633, fakta bahawa dadah dijumpai dibungkus surat khabar bukanlah alasan untuk menyatakan bahawa suatu inferens tidak boleh dibuat terhadap responden bahawa dia mempunyai pengetahuan yang diperlukan.

B Jadi inferen yang tidak dapat disangkal lagi berdasarkan fakta yang wujud berdasarkan keterangan mengikut keadaan yang ada di dalam kes ini adalah P2 yang dijumpai tersorok di bawah tempat pemandu di tempat yang bertanda "X" yang tidak dapat dilihat sekiranya tidak diperiksa oleh L/Kprl Erman dengan disaksikan oleh SP1 tidak boleh membantu OKT untuk menyangkal inferens yang menjurus ke arahnya. Daripada C keterangan yang diperolehi dari SP1 ia adalah jelas bahawa hanya sedikit usaha diperlukan bagi membongkar dan menemui P2 tersebut yang tidak akan dapat dilihat dengan sekilas pandang.

Dalam membuktikan milikan jagaan dan kawalan serta pengetahuan ke atas P2 tersebut pihak pendakwaan telah bergantung kepada pembuktian D barang kes dijumpai di dalam kereta yang dinaiki oleh tertuduh dan hanya tertuduh seorang sahaja yang berada di dalam kereta tersebut.

[7] With the above findings, the SCJ made the decision that the prosecution had proven a *prima facie* case and called for the accused's defence. The SCJ thereafter found that the accused guilty and convicted as E per the charge after the defence gave evidence and sentenced him to a five years' imprisonment.

Grounds Of Appeal

[8] Dissatisfied with the decision of the SCJ, the appellant raised among others the following issue in his appeal:

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(i) the ingredients of possession were not proven by the prosecution.

[9] With respect, after reading the record of appeal, I am in agreement with the appellant's counsel that the most crucial issue in this appeal is whether the prosecution had proven that the appellant had possession of the G parang at the stage of the prosecution's case.

Appellant's Submission

[10] Counsel for the appellant submitted that in proving possession, two elements of possession must be proven which are the custody and control H over the parang and the knowledge on the existence of the parang underneath the driver's seat. The former element is the evidence showing that the appellant has the power of disposal of the parang while the latter element is the mental element, whereby the appellant has knowledge of the existence of the item to constitute possession. Counsel relied on the case of I *Chan Pean Leon v. PP* [1956] 1 LNS 17; [1956] 1 MLJ 237 where it was stated as follows:

Possession itself as regards to criminal law is described as follows in *Stephen's Digest* (9th Edition) at p. 394:

> A movable thing is said to be in possession of a person when he is so situated with respect to it that he has the power to deal with it as owner to the exclusion of other persons, and when the circumstances are such that he may be presumed to do so in case of need.

[11] The appellant's counsel also submitted that to prove custody and control, it is the duty of the prosecution to exclude the possibilities of others having access to the vehicle. Counsel for the appellant referred to the case of *Husin Sitorus v. PP* [2012] 7 CLJ 205 where it was stated as follows:

> the onus is not on the defence to prove possibility of access by others but on the prosecution to prove such possibility and the issue must be answered in favour of the Appellant if there were more than one way in which the evidence adduced by the Prosecution might be viewed such as in the present case, implicating that the Appellant or the other persons who were present in the boat. (*Abdullah Zawawi Yusoff v. PP* [1993] 4 CLJ 1 SC). In other words, exclusivity of custody and control of drugs ought to be established by the prosecution.

[12] The appellant's counsel added that it is most likely that the evidence given by the appellant's wife would enlighten the court on whether the vehicle was driven by many people or was the vehicle driven by others before the appellant drove it on that particular day and whether the parang was already in the vehicle when the appellant took it or whether the appellant knew that the parang was in the vehicle, making the evidence of the appellant's wife crucial to prove the element of custody and control over the parang.

[13] According to the appellant's counsel, knowledge is an implied evidence and it may be inferred from the conduct of the appellant at the material time. From the evidence given by SP1 in the court, the appellant did not attempt to run away, but in fact cooperated with SP1 during the operation which indicated that the appellant had no knowledge of the weapon hidden underneath the driver's seat in the vehicle. Counsel distinguished the facts of the present case with the case of *Samundee Devan Kerishnan Muthu v. PP* [2009] 1 CLJ 498; [2009] 1 MLJ 697 which held that the conduct of the accused trying to run away was taken as inference that the accused had the knowledge of the existence of drugs in his car at the time that the police was conducting search over his car.

[14] In addition to the above, the appellant's counsel submitted the case of *Syed Ali Syed Abdul Hamid & Anor v. PP* [1982] CLJ 188A; [1982] CLJ (Rep) 340; [1982] 1 MLJ 132 which states that the element of knowledge is crucial in proving possession. The relevant part of the judgment is reproduced as follows:

> if possession is proved against both the Appellants they would be guilty of trafficking. The question, therefore, is whether the Appellants were in possession of the Opium at the material time and place when the

A Customs Officers searched the car. One of the elements to constitute possession is knowledge which means that the prosecution must prove that the Appellants knew of the existence of the opium hidden behind the back rest of the car's rear seat.

[15] Hence, it was submitted that the SCJ had failed to direct herself to the B correct principles of law and misdirected herself to the finding of a *prima facie* case against the accused.

Respondent's Submission

[16] The prosecution in this appeal, the respondent, submitted that based on the fact that the appellant was found alone in the car and was in a complete C control of the car, the parang under the driver's seat was said to be in his possession and there was no possibility that other persons might have put the parang there and the parang did not belong to the appellant. The respondent further submitted there was no evidence to prove that the parang was brought and put into the car by other persons.

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[17] Other than that, the respondent submitted that it was the discretion of the prosecution to call upon any person to be a witness of a case and the failure to call upon the owner of the car to testify did not vitiate the prosecution case as what must be proven was the possession of the parang at the material time of the arrest and that the appellant was indeed the only E person inside the car and having control of it.

Findings Of This Court

[18] In order to tackle the issue raised above, I referred to the following cases which comprehensively explain on the proof of possession.

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[19] Firstly, the case of *Law Sie Hoe v. PP* [2014] 1 LNS 269; [2014] 6 MLJ 714 at p. 724, where the the court referred to the Court of Appeal's case of *Toh Ah Loh & Mak Thim v. Rex* [1948] 1 LNS 72; [1949] MLJ 54 which stated the following:

G As regards the issue of possession, we find that it would be helpful to reiterate the underlying principle in play in cases such as the present appeal, which is that possession to be an incriminating act must contain three characteristics. First, the person in possession must have knowledge of the thing in his possession. Secondly, he must have in him a power of disposal over the thing and thirdly, he must be conscious of the H possession of the thing. We noted that the learned trial judge had alluded his mind correctly on this legal point. The case of *Toh Ah Loh & Mark Thim v. Rex* [1949] 15 MLJ 54 is the authority for that legal proposition that had been followed ever since. In that case, it was held by the Court, in the speech by learned Justice Gordon-Smith, Ag C.J. that:

I Possession, in order to incriminate a person, must have the following characteristics. The possessor must know the nature of the thing possessed, must have in him a power of disposal over the thing, and lastly be conscious of his possession of the thing.

> If these factors are absent, his possession can raise no presumption of *mens rea*, without which [except by statute] possession cannot be criminal.

[20] Next is the case of *Siew Yoke Keong v. PP* [2013] 4 CLJ 149 at p. 176; [2013] 3 MLJ 630 at p. 645 where the Federal Court cited the very well celebrated case of *Chan Pean leon v. PP* [1956] 1 LNS 17; [1956] 1 MLJ 237 to determine whether possession was proven by the prosecution. The following judgment was quoted:

> Possession itself as regards to criminal law is described as follows in *Stephen's Digest* (9th Edition) at page 394:
>
> > A movable thing is said to be in possession of a person when he is so situated with respect to it that he has the power to deal with it as owner to the exclusion of other persons, and when the circumstances are such that he may be presumed to do so in case of need.
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> To put it otherwise, there is a physical element and mental element which must both be present before possession is made out. The accused must not only be situated that he can deal with the thing as if it belonged to him, for example have in his pocket or have it lying in front of him on a table. It must also be shown that he had the intention of dealing with it as if it belonged to him.

[21] Hence, based on the principles laid down in both of these cases, there is a physical element and mental element which must be present before possession is made out (see *Siew Yoke Keong v. PP* (*supra*)).

[22] In this appeal, the prosecution must still prove that the appellant had the power of disposal over the parang. There must be evidence which suggests that the appellant had authority over the parang and not anybody else.

[23] The prosecution's evidence must be able to prove that the appellant had control over each and everything in the vehicle, or in other words, the appellant had the power of disposal over everything in the vehicle. I agree with the appellant's counsel's contention that the appellant's wife as the owner of the vehicle was a material witness so as to exclude the possibilities of any other person being the rightful owner to the weapon. The prosecution should have called the appellant's wife to testify in court in order to exclude the possibility of her or anybody else having ownership or possession of the weapon found in the vehicle so as to prove that the appellant have had possession to the exclusion of others over the parang in the vehicle.

[24] The appellant's counsel submitted that there was no DNA analysis and fingerprint evidence produced to establish the prosecution's case that the appellant indeed has power of disposal over the parang. There was no fingerprint dusting done on the parang or DNA swaps taken from the parang to show that the appellant was in contact of the parang. If there are the

A appellant's DNA or fingerprints on the parang, it would indicate that the appellant was in contact with the parang and thus have had sufficient knowledge of its existence underneath the driver's seat in the vehicle and at the same time have had the power of disposal over the parang because he had the power to deal with it at every material time. Hence, there is no additional
B evidence to connect the accused to the parang.

[25] Another flaw in the prosecution's case was that another material witness, the police officer who conducted the search L/Kprl Erman was also not called as witness for the prosecution. L/Kprl Erman is a material witness as he was the one who did the thorough search in the vehicle and he was the
C one who recovered the parang from underneath of the driver's seat. As such he is the best person to provide the evidence on the exact spot on where the parang was found and whether it was visible to others. Looking at the facts of the case, the vehicle was a Myvi which is a small sized vehicle, it would not be possible that PW1 witnessed the complete search conducted by
D L/Kprl Erman during the search. Therefore, the evidence given by PW1 is best only at proving that it was L/Kprl Erman who retrieved the parang from the vehicle and not to prove that the appellant had power of disposal over the parang and he was conscious of the possession of it.

[26] The proof of knowledge is commonly inferred from the facts and
E circumstances of the case. From the notes of evidence, when the appellant was approached by the police officers, he was calm and gave his cooperation to the police officers and there was no indication that he intended to run away. The appellant's conduct is consistent to innocence. If the appellant knew that the parang was kept underneath the driver's car seat, he would in
F normal circumstances put up a struggle and attempted to escape. It is safe therefore to conclude that he did not know about the parang and its whereabouts. As such, the prosecution was unable to prove the mental element for possession which was absent in this case.

[27] Since the parang was hidden under the driver's seat of the vehicle, it
G is not visible to others and the mere fact that the accused was all alone in the vehicle at the material time, does not prove that the appellant had possession of the parang. As the prosecution had failed to exclude the possibility the appellant's wife or anybody else having the ownership or possession of the weapon found in the vehicle and there was no DNA
H analysis or even fingerprints evidence to show that the appellant was in contact with the parang, it is my view that the prosecution had not proven possession against the appellant.

[28] It is also my considered view that the SCJ had failed to appreciate the salient facts of the cases that she referred to in her grounds of judgment.
I In considering the case of *PP v. Kang Ho Soh* [1991] 3 CLJ 2914; [1991] 3 CLJ (Rep) 557 the SCJ should have been aware that the statutory presumption of knowledge over drugs under DDA was applied there which

must be distinguished from the present appeal, which is on an offence under the said Act with no provision to assist a trial court to presume knowledge over the existence of any such weapon though physical element might have been proven. As such the elements of possession must be strictly proved by the prosecution in order to establish the charge against the appellant. Furthermore, in *Kang Ho Soh*'s case, the prosecution called the owner of the car to testify in court to exclude his ownership over the bag which contains drugs and that the bag was not there at the time he lent his car to the accused. Hence, the court held that the accused was the one in possession of the bag which contains drugs.

[29] The SCJ further in her grounds of judgment referred to the Singapore appeal case of *Zulfikar Mustaffah v. PP* (*supra*), which she misdirected herself in applying the principle therein with the current case. That case was a clear cut case of possession of the drugs where the accused was caught red handed holding a bag in his hands which contained five bundles of drugs wrapped in newspapers. Moreover, there were many circumstances which should have alerted the accused to the illicit character of the bag's content though the drugs were wrapped up in newspapers. Thus, knowledge was said to have been established by the prosecution and the defence of the accused being an innocent carrier without the knowledge of the drugs was inapplicable in the case. This is irrelevant to the instant appeal as the appellant was not holding the parang at the material time, but it was found hidden underneath the driver's car seat.

[30] To rebut the SCJ's finding that close proximity alone proves possession, I refer to the case of *Low Thiam Teck v. PP* [2014] 1 LNS 1104; [2015] 3 MLJ 134 at p. 142 which states that the evidence of close proximity is insufficient to prove possession. The relevant part of the judgment is reproduced as below:

> On the issue of proximity to the drugs, we agreed with learned counsel that physical proximity to the drugs *per se* is insufficient to prove possession without proof of knowledge. Except for the evidence of proximity, there was nothing in the conduct of either the appellant or the second accused at the time of their arrest upon which a *prima facie* inference could be made that the appellant or both of them had knowledge of the drugs. At the highest, the evidence merely showed that perhaps the appellant had some momentary custody of the bags together with the second accused. In such circumstances there was no possession.

Conclusion

[31] It is my considered view that based on my above findings, the SCJ was wrong in finding that the prosecution had established possession and that there was a *prima facie* case. The SCJ should not have called for defence of the accused as a *prima facie* case at the end of the prosecution's case has not been made out.

[32] In the case of *Dato' Yap Peng @ Yap Piang Tau v. Public Prosecutor* [1993] 2 CLJ 181 at p. 183; [1993] 1 MLJ 337 at p. 342, stated by Mokhtar Sidin J as follows:

> I agree with the learned DPP that it is trite law that an appellate court does not interfere with the findings of facts of the trial court. But there are exceptions to this rule. An appellate court is always empowered to interfere and must so interfere if the so-called findings of facts of the trial judge suffer from some serious error or the decision is against the weight of evidence. Thus in the case of *Chia Han Kiat v. R*, it was held that:
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> > An appellate court should but rarely interfere with the conclusions arrived at by the judge or magistrate who has had the advantage of hearing the witnesses and obtaining the impression of their veracity from their demeanour. But it is the duty of an appellate court to be a judge of fact as well as of law and it would be abrogating its functions if it made a hard and fast rule never to interfere with the findings of fact, and felt bound to support a judgment which, on a review of all the evidence, it considered to be clearly wrong.

[33] Therefore, I have to interfere with the decision of the SCJ and reverse her decision. The appeal is hereby allowed and I set aside the conviction and sentence imposed by the SCJ. Accordingly, the appellant is acquitted and discharged.